

Utah Administrative Code

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Rule R495-888. Department of Human Services Related Parties Conflict Investigation Procedure.

As in effect on July 1, 2009

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R495-888-1. Authority.

(1) This rule is authorized by Sections 62A-1-110, 62A-1-111, and 62A-4a-409.

R495-888-2. Definitions.

(1) The definitions contained in Title 62A apply. In addition, the following terms are defined for the purposes of this Rule:

(a) "Accepted referral" means a referral that has been screened by APS or DCFS intake and has met the agency's requirements for accepting a referral.

(b) "APS" means Adult Protective Services.

(c) "Case" means a referral that has been accepted for an investigation.

(d) "Child" means a person under eighteen years of age.

(e) "Client" means any person receiving services from DHS.

(f) "Conflict" means:

(i) There is a referral alleging child abuse, neglect or dependency and an employee, volunteer, board member, provider, or contractor of DHS has a relationship with the alleged victim, alleged perpetrator, or another person named in the investigation such that there is or might be a conflict of interest, the appearance

of a conflict of interest, impropriety, or the appearance of impropriety if CPS or DCFS performed the investigation; or

(ii) There is a referral alleging abuse, neglect or exploitation of a vulnerable adult, and an employee, volunteer, board member, provider, or contractor of DHS has a relationship with the alleged victim, alleged perpetrator, or another person named in the investigation such that there is or might be a conflict of interest, the appearance of a conflict of interest, impropriety, or the appearance of impropriety if APS or DAAS performed the investigation;

(iii) There is a referral alleging abuse, neglect or dependency of a minor that is in the custody and/or guardianship of DCFS, DJJS, or DSPD and the alleged perpetrator is an employee, volunteer, board member, provider, or contractor of DHS.

(g) "CPS" means Child Protective Services.

(h) "DHS" means the Department of Human Services, and includes all of the agencies and offices within the Department.

(i) "DCFS" means the Division of Child and Family Services, including its regional offices.

(j) "DAAS" means the Utah Division of Aging and Adult Services.

(k) "DJJS" means the Division of Juvenile Justice Services.

(l) "DJJS Investigator" means an employee of DJJS who conducts internal affairs investigations for DJJS.

(m) "DSPD" means the Division of Services for People with Disabilities.

(n) "Executive Director" is as defined in 62A-1-104 and includes the designee of the Executive Director.

(o) "Minor" means a child, or a person at least eighteen years of age and younger than twenty-one years of age who is in the custody and guardianship of the Division of Child and Family Services or the Division of Juvenile Justice Services.

(p) "OPG" means the Office of the Public Guardian.

(q) "OSR" means the Office of Services Review.

(r) "Reasonable Restraint" means: Justifiable restraint to protect the client or to protect others from the client's acts. Supported physical abuse does not include the use of reasonable and necessary physical restraint by an educator in accordance with Section 53A-11-802(2) or 76-2-401. Nor does it include conduct that constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the client's possession or control, or to protect the client or another person from physical injury.

(i) In determining whether "reasonable restraint" was used, the Related Party Conflict Investigator shall take into account the nature and purpose of the facility.

(s) "Referral" means information provided to DCFS intake alleging abuse, neglect, or dependency of a child, or to APS intake alleging abuse, neglect or exploitation of a vulnerable adult.

(t) "Related Party Conflict Case" means that a conflict has been identified, and the case has been referred to a Related Party Conflict Investigator for a related party

conflict investigation.

(u) "Related Parties Conflict Investigation" means the investigation of a conflict case by a Related Parties Conflict Investigator.

(v) "Related Parties Conflict Investigator" means an employee of DHS assigned to OSR to conduct related parties conflict investigations.

(w) "Secondary worker" means a DCFS employee or an APS employee assigned to a related parties conflict investigation to conduct limited casework activities requested by the Related Parties Conflict Investigator, including but not limited to the following: making priority face to face contact when the Related Parties Conflict Investigator is unable to do so; assisting with the removal of a child; booking the child into a shelter facility; and filing a petition for ongoing In-Home or Out-of-Home services.

(x) "USDC" means the Utah State Developmental Center.

(y) "USH" means the Utah State Hospital.

(z) "Vulnerable Adult" is the same as defined in 62A-3-301(28).

R495-888-3. Purpose.

(1) The purpose of this rule is to establish the criteria used to determine:

- (a) when a related party investigation is necessary;
- (b) how related party investigations will be conducted; and
- (c) how on-going services will be provided to clients.

(2) It is the Department of Human Services' goal to avoid any impropriety or appearances of impropriety that may arise when a conflict exists and to ensure that investigations involving an employee, volunteer, board member, provider, or contractor of DHS are conducted fairly. Related party conflict investigations shall be conducted in a manner consistent with CPS and APS procedures and policies.

R495-888-4. Criteria Used to Determine When a Related Party Investigation Is Necessary.

(1) In general: OSR shall be notified that a potential conflict exists whenever:

(a) a referral has been accepted and a person's relationship with DHS may influence an investigation of abuse, neglect or dependency of a child, or abuse, neglect or exploitation of a vulnerable adult, or

(b) a conflict exists that may prevent the assigned agency from making an objective determination based on the facts of the case.

(c) an accepted referral alleges child abuse, neglect, or dependency by a DHS employee.

(d) an accepted referral alleges child abuse, neglect or dependency by a professional partner of DCFS, including but not limited to: an Assistant Attorney General, a Guardian ad litem, or a law enforcement officer who works directly with DCFS.

(e) an accepted referral alleges that a child has been abused and/or neglected while in the custody and/or guardianship of DCFS or DJJS, while placed in the USH or USDC or while placed with a contracted provider of any of these agencies, and the

alleged perpetrator is an employee, volunteer or board member with DHS, or a provider, or contractor of DCFS.

(f) an accepted referral alleges abuse, neglect, or exploitation of a vulnerable adult by a DHS employee.

(g) an accepted referral alleges that an adult has been abused, neglected or exploited while in the and guardianship of OPG, placed at the USH or the USDC, or placed with a DHS contracted provider of any of these agencies, and the alleged perpetrator is an employee, volunteer, or board member of DHS, or a provider, or contractor of DAAS.

(2) The Executive Director of DHS may, at any time, designate a case a "related party conflict investigation" and direct that the case be assigned to a Related Party Conflict Investigator.

(3) If the conflict is identified after DCFS or APS has initiated an investigation, OSR shall be notified on the next business day after the conflict is identified. If the DCFS or APS worker is responding to an emergency or priority one call, the worker shall complete whatever protective actions are necessary and then staff the conflict with a supervisor.

R495-888-5. Procedure Used When a Related Party Investigation Is Necessary for Children.

(1) When a CPS intake worker identifies a potential conflict, the intake worker shall staff the referral with the OSR Services Review Manager to determine if a conflict exists. The OSR Services Review Manager shall determine whether there is a conflict, and will notify the CPS Intake Worker of its decision.

(2) If a conflict is identified after the initial referral, the assigned CPS worker and/or the CPS worker's supervisor shall notify the OSR Services Review Manager no later than the next business day after the conflict is identified.

(3) Once the accepted case is assigned to OSR, the case shall be assigned by OSR to a Related Party Conflicts Investigator, and the investigation activities from that point forward shall be supervised by the OSR Services Review Manager.

(4) A Related Party Conflict Investigator shall have training that is substantially similar to the training received by CPS workers.

(5) Related Parties Conflict Investigators have the same rights, duties, and authority to investigate referrals as CPS workers.

(6) The following duties are to remain the duties of CPS Intake: receipt of the referral; research; disposition of the referral; establish priority of the referral; and, establish allegation categories.

(7) DCFS shall review unaccepted Related Parties referrals in accordance with DCFS Practice Guidelines.

(8) A DCFS investigator may act as a secondary worker and assist the Related Parties Conflict Investigator.

(9) The Related Party Conflict Investigator shall determine whether the allegations are supported, unsupported, without merit, or false. The Related Parties Conflict Investigator shall report its findings to the appropriate DCFS employee to ensure that the findings are entered into the Licensing or Management Information System and that the appropriate Notices of Agency Action are issued.

(10) If the OSR Services Review Manager determines that no conflict exists, the case shall be referred back to CPS intake for investigation by DCFS.

(11) If the Executive Director has designated a case as a related party conflict case, the OSR Services Review Manager shall assign the case to a Related Parties Conflict Investigator.

R495-888-6. Procedure Used When a Related Party Investigation Is Necessary for Adults.

(1) Allegations of abuse, neglect, or exploitation of a vulnerable adult shall be referred to APS Intake.

(2) If APS Intake accepts the referral and identifies a potential conflict, the Intake worker shall staff the referral with the OSR Services Review Manager to determine if a conflict exists.

(3) The OSR Services Review Manager shall determine whether there is a conflict and will notify APS intake of its decision.

(4) In cases where a conflict exists, the OSR Services Review Manager shall accept the case, and assign the case to a Related Parties Conflict Investigator.

(5) A Related Parties Conflict Investigator shall have training that is substantially similar to the training received by APS investigators.

(6) Related Parties Conflict Investigators have the same rights, duties, and authority to investigate referrals as APS investigators and shall perform its investigation using the same policies, procedures, rules and laws that apply to APS investigations.

(7) An APS investigator may act as a secondary worker and assist the Related Parties Conflict Investigator.

(8) The Related Party Conflict Investigator shall determine whether the referral is supported, inconclusive or without merit. OSR will work with DAAS to ensure that the investigative finding is entered into the Statewide Database created in Section 62A-3-311.1, and that the appropriate Notices of Agency Action are issued.

(9) If the OSR Services Review Manager determines that no conflict exists, the case shall be referred back to APS intake for investigation by APS.

(10) If the Executive Director has designated a case as a related party conflict case, the OSR Services Review Manager shall assign the case to a Related Parties Conflict Investigator.

R495-888-7. Special Procedures for Related Parties Conflict Investigations.

(1) Nothing in this rule is intended to limit an agency's ability to conduct its own internal investigation of any incident that occurs in a facility or by an employee during working hours.

(2) The related parties' conflict investigation is meant to determine whether abuse, neglect or dependency of a child, or abuse, neglect or exploitation of an adult occurred. If, during the course of the investigation, the Related Parties Conflict Investigator believes that a separate investigation into policy or personnel matters is warranted, the Related Parties Conflict Investigator may notify the agency of its concerns.

(3) A Related Parties Conflict Investigator may determine that a person was not abused or neglected if reasonable restraint was used in a DJJS facility, the USH, the USDC, or other contracted facility or program of DJJS or DSPD.

(4) The Related Parties Conflict Investigator may notify the agency of the initiation of an investigation and/or the conclusion of an investigation.

KEY

related parties, investigations, conflict

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January 21, 2009

Authorizing, Implemented, or Interpreted Law

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